IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1558 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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KIRITKUMAR KANAIYALAL JOSHI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SAURIN A SHAH for Appellant(s) : 1,
MR KT DAVE APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 09/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this appeal, the appellant has prayed to quash and set aside the judgment and order dated 07.07.2005 passed by the learned Addl. District & Sessions Judge, Gandhinagar in Sessions Case No. 2 of 2001 whereby, the appellant was convicted for the offences punishable u/s. 498-A & 306 of the Indian Penal Code, 1860 (for short, "the IPC"). For conviction u/s. 498-A of IPC, the appellant was sentenced to undergo rigorous imprisonment for three years and fine of Rs.5,000/- and in default of payment of fine, simple imprisonment for three months; and, for conviction u/s. 306 of the IPC, the appellant was sentenced to undergo rigorous imprisonment for ten years and fine of Rs.5,000/- and in default of payment of fine, simple imprisonment for three months. Both the sentences were ordered to run concurrently. The appellant was also given the benefit of set-off. The amount of fine was directed to be paid to the complainant and the parents of the deceased, if they were alive, in equal proportions.

2.0 The facts in a nutshell are as under ;

On 27.06.1990 the appellant and deceased - Ranjanben got married and, thereafter, resided at the maternal home at Dehgam in Gandhinagar District. After about one

month of the marriage, deceased – Ranjanben informed Manjulaben – the elder sister of the deceased, about the alleged mental and physical harassment meted out to her by the appellant and her mother-in-law, who has adopted the appellant (hereinafter referred to as the "mother-in-law" for the sake of brevity). It was also alleged that the appellant and the mother-in-law used to pick up quarrels with her on every small issues and that she was also not given sufficient food for her survival.

2.1 Somewhere in the month of December 1990, the deceased left her maternal home and, thereafter, stayed at her elder sister's home in Gandhinagar, as her parents had expired in her childhood. On 06.05.1991 deceased- Ranjanben committed suicide by consuming a poisonous substance "Baygon-spray" and also left a "suicide note" behind her.

2.2 On 09.05.1991 the sister of deceased – Ranjanben filed a complaint against the appellant and her mother-in-law before Sector-21 Police Station, Gandhinagar which was registered as I-C.R. No. 809 of 1991 for the alleged offences punishable u/s. 498-A, 306,114 and s. 304-(B) of the IPC.

2.3 On the said FIR, investigation was carried out and the appellant came to be arrested. As the Investigating Officer found sufficient material against the appellant and the mother-in-law, he filed charge-sheet in the Court of learned Judicial Magistrate, First Class, Gandhinagar who, in turn, committed the case to the Court of Sessions and Sessions Case No. 2 of 2001 came to be registered.

2.4 The Sessions Court, on the basis of the evidence led by the prosecution, concluded that the prosecution was successful in establishing the charges against the appellant and recorded conviction and passed sentence, as stated in earlier part of this judgment.

3.0 Mr. Saurin A. Shah learned Advocate for the appellant submitted that except the statements of the relatives of the deceased, who are "hear-say" witnesses, there is nothing on record to show that the appellant had ever raised any demand of dowry or had extended any mental or physical torture to the deceased, as alleged, so as to hold him guilty for the offence punishable u/s. 498-A of the IPC.

3.1 Learned Advocate submitted that the marriage life of the deceased was of less than one year, out of which the deceased and the appellant had stayed together only for a period of about six months. He submitted that since the deceased was a Graduate and the appellant had studied only up to the Xth Standard, the deceased was having superiority complex as a result of which she was not able to adjust with the appellant and had started living separately, i.e. with the family of her elder sister.

4.0 Learned Advocate further submitted that for a period of about five months prior to the incident in question, the deceased was staying at her sister's home in Gandhinagar. He submitted that during the said period, the appellant had never visited the elder sister's home of the complainant, at any time, nor had met the deceased anywhere outside. He further submitted that the aforesaid facts clearly goes to show that it was a case of 'suicide' and not "dowry death" as alleged and, therefore, the appellant could not be held guilty for the offence of dowry death.

4.1 Learned Advocate has relied upon a decision in the case of *Balwant Singh & anr. V. State of Punjab* reported in *2004*

S.C.C. (Cri.) 2057 wherein it has been held that the facts and circumstances must show the existence of a proximate live link between the effect of cruelty or harassment for or in connection with dowry demand and death of the victim soon before the death in order to hold conviction u/s. 498-A & 304-B of the IPC. Learned Advocate has, therefore, submitted that the conviction recorded by the learned trial Judge is illegal and improper and deserves to be quashed and set aside.

5.0 Learned Advocate submitted that if this Court is not inclined to entertain this appeal so far as the conviction part is concerned, then this Court may appropriately reduce the sentence since the Court below has not considered all the relevant facts while judging the adequacy of the sentence.

5.1 In support thereof, learned Advocate relied upon a decision of the Apex Court in the case of *Ramashraya Chakravarti V. State of Madhya Pradesh* reported in *(1976) 1 S.C.C. 281* wherein it has been held that several factors are required to be taken care of while considering the quantum of sentence and that a humanitarian approach is required to be taken.

5.2 Learned Advocate has next relied upon a decision in the case of *Ananda Dagadu Jadhav & ors. V. Rukminibai Anand Jadav (Smt.) & anr.* reported in *1993 Suppl. (3) S.C.C. 68*. In that case, the offence was committed about 18 years ago and the accused was facing the proceedings for over 17 years. The Apex Court, considering the facts of the case, reduced the substantive sentence of five years of imprisonment to the period already undergone.

5.3 Learned Advocate has next relied upon a decision in the case of *Raj Rani (Smt.) V. State (Delhi Administration)* reported in *2001 S.C.C. (Cri.) 1518* wherein it has been held that where the suicide note does not indicate that the words mentioned therein were sufficient enough to amount to cruelty, conviction u/s. 498-A cannot be sustained.

6.0 Mr. K. T. Dave learned APP supported the judgment and order passed by the learned trial Judge and submitted that the trial Court was completely justified in convicting the appellant for the offences punishable u/s. 498-A and 306 of the IPC. He submitted that the evidence on record and the statements of the

witnesses support the case of the prosecution beyond doubt and, hence, no interference is required by this Court in this appeal.

7.0 Heard learned counsel for the parties and perused the documents on record. The marriage between the appellant and the deceased took place on 27.06.1990. From the record, it appears that on account of some disputes between the appellant / mother-in-law and the complainant, the deceased left the matrimonial home somewhere in the month of November 1990 and, thereafter, started residing with her elder sister's family in Gandhinagar until the incident in question took place. It is not in dispute that the deceased expired at the residence of her elder sister by consuming poison. Therefore, the question which is required to be considered by this Court is as to whether any mental / physical torture was extended to the deceased for want of dowry; and that, if any such torture was extended, then it was the reason which compelled the deceased to consume poison.

8.0 The deceased expired on 06.05.1991 at the residence of her elder sister on account of consumption of poison. The complaint at Exhibit – 27 came to be filed by the elder sister of the deceased on 09.05.1991. In the complaint, it is alleged that the

deceased was not given sufficient food at her matrimonial home and that the appellant was only interested in the property of the elder sister of the complainant. It is further alleged that the mother-in-law of the deceased used to pick up quarrels with the deceased on every small issues and that on certain occasions, the appellant also used to slap the deceased and, therefore, the deceased was not willing to stay with the appellant.

9.0 The elder sister of the deceased was examined as PW-3 at Exhibit – 22. She has deposed that the appellant had left the deceased at her home in the fifth month of her marriage life. She has further deposed that after the appellant had left the deceased at her home, the deceased informed her about the torture that was extended to her by the appellant and her mother-in-law. On the day of the incident, when the elder sister of the deceased returned home after purchasing necessary grocery items, she noticed that the door of the house was locked from inside and that when no response was received from inside the room, a neighbor entered the room through the bath-room by breaking the window. At that time, it was noticed that the deceased was lying idle and that along side the body of the deceased, a glass of water, a note and a can of "baygon-spray"

were lying.

9.1 In her cross-examination, the elder sister of the deceased has deposed that the said note at Exhibit – 26 was written by the deceased as she could identify her hand-writing. She has further deposed that the said note was given to her by one Devyaniben Vyas, in the Hospital, when she and said Devyaniben Vyas had taken the deceased to the Hospital in a Auto-rickshaw. Thus, from the cross-examination, it is evident that the elder sister of the deceased has narrated two different versions of the incident so far as it pertains to the aspect of "suicide note".

10. The deposition of the husband of the elder sister of the deceased, who expired during the pendency of the proceedings, was exhibited as evidence at 'Mark-A' on the basis of the statement of the defence witness – Head Constable, Rasikbhai Jivrambhai. The said witness has stated that when the appellant had come to his house about two or three months prior to the incident, at that time, he had informed the appellant that the deceased was not willing to stay with the appellant on account of the torture meted out to her by the appellant and her mother-

in-law. It is also stated that during his absence, the appellant used to visit his house to meet the deceased and that, at the time, the appellant used to inform the deceased to come back with him. Therefore, the appellant was told by the deceased – husband that he must not visit his home, in his absence, and that if he had to say anything, he may come and meet him at S.T. Depot, Gandhinagar.

11. Having regard to the charge levelled against the appellant, we do not find it necessary to discuss the evidence of other witnesses in this judgment.

12. The evidence of Manjulaben Bachubhai Gadhvi (PW-3) Exhibit – 22 and that of deceased Bachubhai Kanjibhai at Mark-A, leave no room for doubt that the victim was harassed and treated with cruelty for a period of about six months after her marriage. We find no reasons to disbelieve the depositions of the witnesses so far as it is related to the mental and physical cruelty meted out to the deceased by the appellant. We are, therefore, of the opinion that the aforesaid facts clearly make out a case u/s. 498-A of the IPC against the appellant.

13.0 For conviction u/s. 498-A of the IPC, the trial Court has awarded a sentence of three years rigorous imprisonment and fine of Rs.5,000/-. In judging the adequacy of a sentence, factors like the nature of the offence, the circumstances of its commission, the effect of the punishment on the offender, eye to correction and reformation of the offender, are some amongst many other factors that are ordinarily required to be taken into consideration.

13.1 In the present case, considering the fact that the offence was committed in the year 1991 and that the appellant has undergone the ordeal of the proceedings well over for a period of fifteen years and keeping in mind the principle laid down in the decisions cited hereinabove, we feel that the ends of justice would be met by reducing the substantive sentence imposed on the appellant.

14.0 If we go through the depositions of each of the prosecution witnesses, no where any allegations with respect to any demand of dowry by the appellant appears to have been made, except that of the allegation of demand of a new motor-cycle. Having perused the evidence on record, we find that there

is no material whatsoever to prove the charge leveled against the appellant so far as the demand of a new motor-cycle in concerned. The mere fact that the appellant had raised the demand of a new motor-cycle is no ground to convict him.

14.1 It may be noted that for a period of about five months prior to the incident in question, the deceased was staying with her elder sister's family at Gandhinagar. Now, even if the case of the prosecution is accepted, then the alleged cruelty or harassment related to a period much before the date of death of the deceased. There does not appear any perceptible nexus between the death of the deceased and the dowry-related harassment or cruelty inflicted. If the interval that elapsed between the infliction of such harassment / cruelty and the death is wide, then the Court would be in a position to gauge that in all probability, the harassment / cruelty would not have been the immediate cause of the death of the deceased. There must exist a proximate and live link between the effect of cruelty based on dowry demand and the death of the victim. If the cruelty is remote in time and has become stale enough, not to disturb the mental equilibrium of the woman concerned, it would be difficult for us to hold conviction u/s. 306 of IPC.

14.2 Even in the complaint at Exhibit – 27 filed by the elder sister of the deceased, no allegations with respect to any harassment / cruelty being extended to the deceased for want of dowry have been made. On the contrary, there is contradiction in the deposition of PW-3 with respect to the finding of the "suicide note" inasmuch as in her deposition, PW-3 has stated that she found the said note from the place of incident and in her cross-examination, she has admitted that the said note was given to her by one Devyaniben Vyas in the Hospital. Apart from that the Investigating Officer, in his deposition, has stated that offence u/s. 306 was added subsequently only on the basis of the said "suicide note". Thus, there is clear contradiction with respect to the story put forward by the prosecution so far as it pertains to convicting the appellant for the offence of dowry death. It is also borne out from the record that the appellant had not met the deceased for a period of about two months prior to the date of incident.

14.3 All these factors lead us to believe that the cause of death appears to be more of a 'suicide' and, in no case, a "dowry death". In the absence of sufficient evidence on record, it would be difficult for us to convict the appellant for the offence

of dowry death. We, accordingly, hold that no case for conviction u/s. 306 of the IPC is made out against the appellant.

15.0 In the result, the Appeal is partly allowed. The impugned judgment and order dated 07.07.2005 passed by the learned Addl. District & Sessions Judge, Gandhinagar in Sessions Case No. 2 of 2001 is modified to the extent that the conviction of the appellant under Section 498-A of the Indian Penal Code, 1860 is upheld whereas, the conviction under Section 306 of the Indian Penal Code, 1860 is quashed and set aside. However, the sentence for conviction under Section 498-A is reduced to rigorous imprisonment for a period of **TWO YEARS** and Fine of Rs.5,000/- (Rupees Five thousand only) and in default of payment of Fine, further simple imprisonment for a period of three months. If fine, as aforesaid, is already paid by the appellant, the same shall be paid to the complainant – Majulaben Babubhai Gadhvi.

(Anil R. Dave, J.) (K. S. Jhaveri, J.}

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